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Robert Cazier

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EXAMINER

RICHER, AARON M

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/023,608	<b>Applicant(s)</b> CAZIER ET AL.	
	<b>Examiner</b> Aaron M. Richer	<b>Art Unit</b> 2628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 22-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

2. A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim which depends from a dependent claim should not be separated by any claim which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

3. Claim 7 is objected to because of the following informalities: The word "a" in line 3 should be "an". Appropriate correction is required.
4. Claim 17 is objected to because of the following informalities: The word "comprising" in line 3 appears to be a typographical error. Appropriate correction is required.
5. Claim 19 is objected to because of the following informalities: The claim recites dependency on claim 17, but from the context of the claim, it is clear that it should depend from claim 18. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1-10 and 18-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
8. Claims 1-10 recite "an active graphical control". From applicant's specification, it is clear that this is referring to a graphical user interface element. A graphical user interface element is not a process, machine, manufacture, or composition of matter. It is simply an image that can be manipulated on a computer screen, and would fall under the non-statutory category of "non-functional descriptive material". See MPEP 2106.01.
9. Claims 18-21 recite a "program configured to" perform the step of displaying an active graphical control. The claims therefore recite a computer program per se, which does not fall under any of the statutory categories for inventions under 35 USC 101. A program is considered "functional descriptive material", and is not statutory. See MPEP 2106.01, particularly section I.

***Claim Rejections - 35 USC § 112***

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
11. Claims 1-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims recite an "active graphical control" with "means for detecting at least one color in a background". As noted above in the 35 USC 101 rejection, an

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“active graphical control” is disclosed in the specification to be simply an image in a graphical user interface. It is not possible for an image itself to contain means for detecting anything, since it is simply an image, rather than a computer system or a computer-readable medium storing a program to perform steps to detect. Therefore, these means are not enabled.

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 recites the limitation “the second color” in line 3. There is insufficient antecedent basis for this limitation in the claim. Because the claim is dependent on claim 1, which recites a different “second color”, it is unclear whether “the second color” is referring to the “second color” of the background or the “second color” of the element.

### ***Claim Rejections - 35 USC § 102***

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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15. Claims 1, 2, 4, 11-13, 15, 17, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Abdelhadi (U.S. Patent 6,486,894).

16. As to claims 1, 11, and 15, Abdelhadi discloses an active graphical control comprising:

at least one graphical element with at least a first pixel the pixel having a first color (fig. 3, the mouse pointer is an active graphical control with a color);

a means for detecting at least one color in a background where the at least one color is near the first pixel (fig. 1, element 118; the invention detects background colors at locations the pointer is moved to);

the at least one pixel configured to change to at least a second color when the contrast between the first color and the at least one color in the background is below a predetermined level (fig. 3, elements 324, 320, and 322; also see col. 4, line 36-col. 5, line 36).

17. As to claim 2, Abdelhadi discloses an active graphical control where there is at least a second color in the background near the graphical element, and the at least one graphical element changes to a third color at the place where the second color is near the graphical element (fig. 3, elements 324, 320, and 322; the pointer changes in multiple places depending on the background colors at those locations).

18. As to claim 4, Abdelhadi discloses an active graphical control where the second color is selected to maximize the contrast against the background color (col. 5, line 38-col. 6, line 15; a formula to maximize contrast is disclosed).

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19. As to claims 12, 13, and 17, Abdelhadi discloses a method including repeating the steps of adjusting contrast each time the background adjacent to the graphical control changes or the graphical control moves (fig. 1, element 124; when the pointer moves into an area of different background, the steps are repeated).

20. As to claim 18, see the rejection to claim 1. Also, Abdelhadi discloses an outer perimeter of a pointer and changing the color of the pointer based on colors adjacent to the pointer (fig. 3; clearly the pointer has a perimeter and multiple colors based on background color adjacency to that perimeter).

21. Claims 7, 8, 16, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Bates (U.S. Patent 6,809,741).

22. As to claims 7, 16, and 20, Bates discloses an active graphical control comprising:

- a first graphical element with at least a first color and having an outer perimeter (fig. 2; elements 264, 265; col. 4, lines 8-15; the buttons read on graphical controls);

- a means for detecting an at least one background color where the at least one background color is adjacent to the outer perimeter (col. 4, lines 15-33; text objects are compared to a background);

- the first graphical element configured to change the at least one background color to a second background color when the contrast between the at least one background color and the first color is below a predetermined level (col. 4, lines 15-33; text or background colors are changed based on a user's preference).

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23. As to claim 8, Bates discloses an active graphical control where there is at least a third background color adjacent to the outer perimeter of the graphical element, and the at least one graphical element changes the third background color to a fourth background color at the place where the third background color is adjacent to the outer perimeter of the graphical element (col. 4, lines 15-33; multiple background colors are changed if they exist and are adjacent to text).

***Claim Rejections - 35 USC § 103***

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

25. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

26. Claims 3, 5, 6, 14, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abdelhadi in view of Bates.



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27. As to claims 3 and 6, Abdelhadi does not disclose a user-selected color, nor does Abdelhadi disclose text as a graphical element. Bates, however, discloses a user-selected color combination for text and backgrounds (col. 4, lines 3-33). The motivation for this is to allow a user to see preferred colors and control the contrast effect (col. 2, line 41-col. 3, line 10) and also allow that user to read text on a hard-to-read background (col. 1, lines 30-59). It would have been obvious to one skilled in the art to modify Abdelhadi to allow a user to select a text and background color combination in order to allow a user to control a contrast effect and better read text as taught by Bates.

28. As to claims 5, 14, and 19, Abdelhadi discloses an active graphical control where there is at least a second color in the background near the first pixel, but does not disclose a control wherein the second color of the pixel is chosen to maintain a predetermined level of contrast between *both* the first color in the background and the at least second color in the background. Bates, however, discloses changing the color of a graphical element to enhance contrast with a multicolored background using a weighting calculation (col. 4, lines 3-33). The motivation for this is to allow a user to read text on a hard-to-read background (col. 1, lines 30-59), in this case one that is multicolored. It would have been obvious to one skilled in the art to modify Abdelhadi to maintain a predetermined level of contrast with two background colors in order to allow a user to read hard-to-read text on a multicolored background as taught by Bates.

29. Claims 9, 10, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates in view of Betrisey (U.S. Patent 6,738,526).

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30. As to claims 9, 10, and 21, Bates discloses detecting background colors and changing the colors based on level of contrast as noted in the rejections to claims 7 and 8. Bates does not disclose this where a graphical element has a transparent component. Betrisey, however, discloses a method of contrast enhancement between a transparent component and a background (col. 4, lines 7-13; background color varies as a function of a background image; col. 18, lines 30-45; alpha values of the transparent component are also adjusted for contrast enhancement). The motivation for this is to display small sized text at reasonable quality levels (col. 5, lines 34-48). It would have been obvious to one skilled in the art to modify Bates to perform contrast enhancement on a transparent component in order to allow small text to be shown at reasonable levels of quality as taught by Betrisey.

### ***Conclusion***

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to contrast enhancement in general:

U.S. Patent 6,636,228 to Morton

U.S. Patent 6,788,308 to Reavy


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron M. Richer whose telephone number is (571) 272-7790. The examiner can normally be reached on weekdays from 8:30AM-5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung can be reached on (571) 272-7794. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMR  
7/11/07



KEE M. TUNG  
SUPERVISORY PATENT EXAMINER